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tenancy. They rely upon exhibit No. 10, which, though held not proved by the Subordinate Judge, is held proved by the District Judge. That, they say, is the lease under which they have held for more than a century. We have, therefore, to see what the nature of the tenancy created by that document is. The words in it relied upon by Mr. Athlye as creating a permanent tenancy are these:—"You must pay every year Government dues, and enjoy the fields along with the garden lands without disturbance, *(sukhrup ráháne)*, besides the fixed amount there will be no oppression on account of cesses." We are unable to hold that these words create a permanent tenancy. There is nothing said in the document itself, nor is there any extrinsic evidence, as to the circumstances under which, or the consideration for which, the lease was granted, to render it probable that a permanent tenancy was intended to be created. Nor do exhibits 6 and 59, referred to by Mr. Athlye, evidence any such intention. No doubt the tenancy has, in fact, continued for a very long time; but there is nothing to prevent a tenancy from year to year continuing for a century, or even longer, if neither the landlord nor the tenant chooses to put an end to it.

The decree of the District Judge must, therefore, be reversed, and that of the Subordinate Judge restored, with costs in both appeals on the present respondent.

Decree reversed.

APPELLATE CIVIL.

1885. *March* 19.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.

SHANKAR BHARATI SVA'MI (ORIGINAL DEFENDANT), APPELLANT, *v.* VENKA'PA NA'IK (ORIGINAL PLAINTIFF), RESPONDENT.*

Math—Liability of savasthán of math for money borrowed by the svámi.

The *svámi* of a *math* presumably has no private property, and must be assumed to be pledging the credit of the *math* when he borrows money for the purposes of the *math*.

Proper purposes are to be determined by the usage and custom of the *math*.

* Appeal No. 30 of 1883.

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THIS was an appeal from the decision of Ráv Bahádur Bábáji Lakshman, First Class Subordinate Judge of Dhárwár.

The plaintiff sued the defendant on a money bond for Rs. 9,000 alleged to have been executed to the plaintiff on the 31st January, 1878, by one Vidyáshankar, the predecessor of the defendant in the office of the *svámi* of the *math* Kudalji. Vidyáshankar having died, the plaintiff sought to recover the debt, with interest, from the defendant The plaintiff alleged that the debt was contracted to meet the necessary and proper expenses of the *savasthán*; that the defendant was the heir of the deceased Vidyáshankar, and was in possession of his estate; and contended that the moveable and immoveable estate of the *savasthán* was liable for the debt.

The defendant contended that Vidyáshankar did not receive from the plaintiff any consideration; that the plaintiff was not entitled to obtain a decree against the defendant personally, or against the property of the *math*; and that the allegation of the plaintiff, that Vidyáshankar left any personal property which the defendant inherited, was false.

The Subordinate Judge of Dhárwár held the bond proved; that the money mentioned therein was paid by the plaintiff; that it was required for the purposes of the *math*; that the plaintiff honestly believed it was so required, he was not under any obligation to show how it was spent. Accordingly he ordered that the plaintiff should recover Rs. 14,400 from the property of the Kudalji *savasthán*.

The defendant appealed to the High Court.

K. T. Telang (*Náráyan Ganesh Chandávárkar* with him) for the appellant.—The appellant's predecessor in office should be looked upon as a trustee for the *savasthán*, and the debt which he incurred, though avowedly for the purposes of the *math*, was a personal debt, the property of the *savasthán* not being specifically charged therewith. Under the English law a trustee who raises money for the purposes of the trust, but does not specifically charge the trust, is personally liable for it, and the creditor has no remedy against the trust estate—*Strickland* v.

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Symons[1]; *Farhall* v. *Farhall*[2]. However, if the respondent should hold the *savasthán* liable for the debt, it is necessary for him to show that the debt was properly incurred and properly applied—*Trimbak Anant* v. *Gopálshet*[3]; *Gane Bhive* v. *Kane Bhive*[4].

Latham, (Advocate General), *Ganesh Rámchandra Kirloskar* with him, for the respondent.—The English cases cited for the appellant have no application to the present case. There is a difference between the liability of an executor or manager of a charitable institution under the English laws and a *svámi* or manager of a *math*. A manager is a trustee no doubt, but he has full authority to incur debts for the service of *devasthán*, and his position is the same as that of a manager of an infant—*Prosunno Kumari* v. *Golábchand*[5]. The sale even of such a property is justifiable—*Konwur Doorgánáth Roy* v. *Rámchander*[6]; *Sammantha Pandara* v. *Sellappa Chetti*[7]. The Indian cases on this point show that an inquiry and a *bonâ-fide* belief that the money was required for *devasthán* purposes is all that is necessary on the part of the creditor when he advances the loan, and such was duly done in the present case.

SARGENT, C.J.—This is an action on a money bond alleged to have been passed to the plaintiff by one Vidyáshankar, the *guru* of the defendant, and his predecessor in the office of *svámi* of the *math* Kudalji, by which the plaintiff claims to make the defendant liable as the heir of Vidyáshankar, and also to enforce the bond against the *savasthán* of the *math*. The Subordinate Judge held the bond to be proved; that the money mentioned in it was paid by the plaintiff; that it was required for the purposes of the *math*; and that as the plaintiff honestly believed it was so required, he was under no obligation to show how the money was spent; and ordered that the plaintiff should recover Rs. 14,400 from the property of the Kudalji *savasthán*.

The only serious objection, which has been taken to this decree on appeal, was that, as the bond was a mere money bond, and did not, in terms, make the loan a charge on the *savasthán* of the

(1) L. R., 26 Ch. Div., 245.
(2) L. R., 7 Ch. Ap., 123.
(3) 1 Bom. H. C. Rep., 27, A. C. J.
(4) 4 Bom. H. C. Rep., 171, A. C. J.
(5) L. R., 2 Ind. Ap., 145.
(6) L. R., 4 Ind. Ap., 52.
(7) I. L. R., 2 Mad., 175.

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math, although the loan might have been for the purposes of the *math*, it could only be enforced against Vidyáshankar personally, and not against the *savasthán*. The case was said to be similar to that of an executor contracting a loan for the purposes of the estate by English law—see *Farhall* v. *Farhall* [1]; or that of the manager of a charitable institution incurring a liability for the purposes of the institution—*Strickland* v. *Symons* [2]. It is sufficient for the present case to say that those decisions are, in our opinion, inapplicable to the case of the *svámi* of a *math*, who presumably has no private property, and must, therefore, be assumed to be pledging the credit of the *math* when he borrows money for the purposes of the *math*. That being so, the bond was binding on the *savasthán*, if the loan was for the purposes of the *math*, or the plaintiff had *bonâ fide* reason to suppose it was intended for such purposes.

It appears that a dispute had arisen between Vidyáshankar and Narsinhbharati for the "holy throne of Kudalji" on the death of the previous *svámi*, which lasted from 1875 till 1878, when an arrangement was come to between them; and Vidyáshankar, who had been nominally installed in 1875, was again installed and became the undisputed *svámi* of the *math*. It would appear from the evidence that, during the rivalry of the contending *svámis*, the immoveable property of the *math* was attached by Government, and that Narsinhbharati had possession of the moveable property. Moreover, it was a season of famine, and the lands of the *math* yielded little or no profit. Under these circumstances it is highly probable that Vidyáshankar should have incurred liability during the period of disputed authority, whether for his own expenses or the wages of the servants of the establishment. Further, the arrangement entered into by him with Narsinhbharati shows that the latter had pledged the sacred vessels of the *math*, and that they were to be redeemed by Vidyáshankar. It was, therefore, to be expected that Vidyashankar would be obliged to contract a loan to meet the above claims against him when he was ultimately installed as the undisputed head of the

(1) 7 Ch. App., 123. (2) L. R., 26 Ch. Div., 245.

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math. This may show that the necessity for the loan was in great part due to the conflict for the headship of the *math*. But the entire administration of the establishment was vested in Vidyáshankar as the presiding *svámi* when the bond was passed: see Steele's Hindu Law and Custom, Appendix, p. 436, and the case of *Sammantha Pandara* v. *Sellappa Chetti*(1); and there is no evidence in the case to justify the conclusion, that a loan effected under such circumstances to meet the exigencies of the presiding *svámi* and to restore tranquillity to the *math*, would, according to the custom and usage of the *math* in question, be regarded as improperly contracted.

The defendant himself, it is to be remarked, only disputed the genuineness of the bond, alleging that he knew nothing about it, and has himself recognized the obligation to pay a bond of Rs. 6,000 contracted by Narsinhbharati during the dispute. But, in any case, we think that, having regard to the authority vested in the head *svami* of a *math*, the plaintiff was fairly entitled to assume from the statement of Vidyáshankar, when he applied for the loan in 1878, that it was required for the *bonâ-fide* purposes of the establishment. The decree must, therefore, be confirmed, except as to interest on the bond, which, as the respondent contends, should be given up to the date of the decree, with interest at six per cent. on the judgment debt, till payment. Defendant to pay plaintiff his costs of this appeal.

Decree confirmed.

(1) I. L. R., 2 Mad., 175.